EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC.,	CAUSE NO.
et al,	08-13555(JMP)
Debtors.	

- x

In re

LEHMAN BROTHERS, INC.,	CAUSE NO.
Debtor.	08-01420(JMP)(SIPA)

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

November 14, 2012

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

ECRO: MATTHEW

HEARING re Notice of Final Applications of Retained Professionals for Final Allowance and Approval of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from September 15, 2008 to March 6, 2012 (ECF Nos. 31901)

HEARING re Plan Administrator's Cross-Motion to Compel Giants Stadium LLC to comply with Rule 2004 Subpoenas and Objection to Giants Stadium's Motion to Quash the Rule 2004 Subpoenas (ECF No. 31652)

HEARING re Motion to Quash a Subpoena filed by Bruce E. Clark on behalf of Giants Stadium LLC (ECF No. 31339)

HEARING re Amended Motion of Giants Stadium LLC for Leave to Conduct Discovery of the Debtors Pursuant to Federal Rule of Bankruptcy Procedure 2004 (ECF No. 31105)

SIPA PROCEDURES

HEARING re Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for Entry of an Order Approving Settlement Agreement Between the Trustee and Lehman Brothers Finance AG, in Liquidation (a/k/a Lehman Brothers Finance SA, in Liquidation)(LBI ECF No. 5362)

HEARING re Trustee's Motion Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) for Approval of General Creditor Claim (I) Objections Procedures and (II) Settlement Procedures (LBI ECF No. 5392)

HEARING re Debtor's Three Hundred Fifty-Seventh Omnibus Objection to Claims (Misclassified Claims (ECF No. 31048)

HEARING re Objection to Claim No. 17763 Filed by Laurel Cove Development, LLC (ECF No. 29187)

HEARING re Three Hundred Twentieth Omnibus Objection to Claims (No Liability Rose Ranch LLC Claims)(ECF No. 29292)

HEARING re Debtor's Three Hundred Twenty-Ninth Omnibus Objection to Claims (Misclassified Claims)(ECF No. 29324)

HEARING re Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Lehman Brothers, Inc. (ECF No. 43)

HEARING re Turnberry Centra Sub, LLC et al v Lehman Brothers Holdings, Inc., et al (Adversary Case No. 09-01062)

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MS. MARCUS: Good morning, Your Honor, Jacqueline Marcus from Weil Gotshal and Manges on behalf of Lehman Brothers Holdings, Inc. as plan administrator.

We're here this morning, Your Honor, for the fifty-fifth omnibus hearing, as well as the rescheduled claims hearing that had previously been scheduled for October 31. We're glad that the courthouse has reopened, and that things are starting to get back to normal.

The first item on the agenda, Your Honor, is the fee hearing related to uncontested fee applications. Mr. Gitlin will be handling that on behalf of the fee committee.

THE COURT: Fine. Mr. Gitlin, good morning.

MR. GITLIN: Good morning, Your Honor. Richard Gitlin, chairman of the fee committee.

Your Honor, I'm very pleased to report to the Court that the fee committee has reached a consensual agreement with 25 of the 47 professionals, which is outlined in the report that we submitted to the Court.

I would like to comment on the professionals, both their work and their activity in working with the fee committee, Your Honor. This has been an extraordinary effort on behalf of the professionals and the Court to make this happen in three years, as successfully as it has been

done.

And the professionals are to be complimented for that. But they're also to be complimented for the civility and attention they gave to the fee committee, as the fee committee raised issues and issues that had to be resolved. And I will say these 25 professionals in all acted in that fashion, and they should be commended for that, Your Honor.

So I would respectfully request Your Honor to approve the 25 uncontested professional final fee applications. I would mention that the remaining 22 are scheduled for November 29th. We are in conversation with all them. We do have some sticky issues, we're still dealing with, but we are hopeful that we'll be able to come before the Court on the 29th with similar consensual agreements. Thank you.

THE COURT: Thank you, Mr. Gitlin, and I'm hopeful that you're successful with the remaining 22 myself.

I'd like to make a couple of comments. First of all, all of the 25 applications that are the subject of the committee's report are approved, with the adjustments reflected in the schedule to your report. I also wanted to say I found the committee's report to be remarkably well prepared, nuisance in its treatment of the issues that were addressed by the committee, and a model of the kind of work that fee committees or fee examiners as they're sometimes

identified to be, can do in all significant cases. It's a superb precedent, and I commend you and your counsel in preparing it.

Additionally, a true public service has been done here by members of the committee in making the fee application process in the largest bankruptcy case in history one that even through today has been consensual and without public controversy. That is a particularly remarkable accomplishment in consideration not only of the size of the case, but the aggregate fee awards themselves.

Business publications including the Wall Street Journal routinely have written about the burn rate in the case and the aggregate fees in the case. I think your report very appropriately puts those expenses in context, compliments the professionals for their good work, but also compliments them for their flexibility and integrity in dealing with the fee review process.

One of the more telling comments made in the report is that the approximately $1.8 billion in approved cumulative professional fees in the cases represents, and I haven't done the math, but I accept what you said, approximately three percent of distributions to unsecured creditors. In effect, the fees in this case represent on a percentage basis a result that would be admirable in virtually any bankruptcy case.

Under the circumstances, I am not only pleased to approve the 25 applications that are the subject of today's hearing, but to compliment you and the other members of the fee committee for doing truly extraordinary work that benefitted the Court, benefitted the professionals, but also served the public interest in demonstrating that the professionals in the case were held accountable, but were held accountable in a manner that was sensitive to the needs of the case, and to the issues that have been identified in your report, which I commend you on again.

MR. GITLIN: Well, Your Honor, thank you very much for your comments. But I must say that the report is a reflection of the quality of the work that counsel has provided in this case. Godfrey and Kahn has been the machinery behind the ability to deal effectively with these fees, and the draftsmen of that report. So I must extend your compliments more to them, Your Honor, but I very much appreciate your comments, Your Honor.

THE COURT: Anyone who had a hand in drafting the report deserves praise.

MR. GITLIN: Thank you, Your Honor.

THE COURT: All right, fine.

MR. KORNBERG: Your Honor, Alan Kornberg of Paul Weiss Rifkin and Garrison for Houlihan Lokey. We have one technical issue with respect to Houlihan's final fee

application, which is the subject of the fee examiner's report.

Your Honor may recall that the deferred fees paid to Houlihan are paid as and when distributions are made to general unsecured creditors. As we mentioned in our final fee application, there need to be a procedure for payment of those, and we have a form of order that we circulated, and I believe is acceptable to the parties, that provides -- there don't have to be further Court orders to approve those fees when they're paid, as to when the distributions are made, but there is a process by which Houlihan will send a fee statement, the debtor, the U.S. Trustee, counsel for the committee will have 30 days to verify that's correct. If there's a problem, we can talk about it. If we can't resolve it, we would then come back to the Court.

So we have a very simple form of order that provides for that mechanism with respect to the deferred fees.

THE COURT: Okay.

MR. KORNBERG: And I'd like to submit that to Your Honor.

THE COURT: That's fine. Has that order been reviewed by everyone who needs to see it and comment upon it?

MR. KORNBERG: It has been reviewed by folks in

your office.

MS. MARCUS: That was my question.

MR. KORNBERG: And the fee committee and the U.S. Trustee, and I believe -- okay, so we'll show it to Malank (ph) and then submit it, Your Honor.

THE COURT: Okay, fine. I just -- since you mentioned the U.S. Trustee, I just would like to note something on the record. We received a telephone call this morning from Andrea Schwartz, who would have been here today, but apparently suffered an accident on the way to work in the subway, and has been taken to the hospital.

We believe this is not serious, but she wanted us to know that her absence should not be viewed as an indication that the U.S. Trustee did not take very seriously the matters that were before the Court with respect to professional fees. I understand that Susan Golden from her office is participating by telephone, just in case --

MS. GOLDEN: Good morning, Your Honor. This is Susan Golden, I literally just dialed in and heard the last part of what you just said.

THE COURT: You missed the best part of the hearing. I just wanted to note that the comments that I made with respect to the fee committee certainly apply to the role of the U.S. Trustee as a member of that committee. And we hope that Andrea Schwartz has not been seriously hurt

and will be back in court soon.

MS. GOLDEN: To our knowledge, you know, she just has a minor injury, but she'll be okay.

THE COURT: Okay.

MS. GOLDEN: Thank you for inquiring.

THE COURT: All right. And then as far as the Houlihan Lokey order is concerned, which became an opportunity for that digression, it will be entered as an agreed order.

MR. KORNBERG: Thank you, Your Honor.

MR. GITLIN: Thank you, Your Honor.

THE COURT: And everyone who wishes to be excused in connection with the fee issues that were just presented may do so.

(Pause)

MS. MARCUS: Your Honor, the first group of contested matters on the agenda relates to the plan administrator's disputes with Giants Stadium. My partner, Richard Slack will be handling those matters.

THE COURT: Okay. Let's wait for other counsel to assemble.

MR. SLACK: Thank you, Your Honor.

THE COURT: Good morning. Before we get into the argument with respect to this discovery dispute, I'll take appearances, and I'm also going to ask some questions that I

would like you to focus on in your presentation.

MR. SLACK: Okay. So, Your Honor, Richard Slack from Weil Gotshal on behalf of the plan administrator and Lehman.

MR. CLARK: Good morning, Your Honor, Bruce Clark from Sullivan and Cromwell for Giant Stadium. With me is my colleague Thomas Wright.

MR. WRIGHT: Good morning, Your Honor.

THE COURT: Good morning. Okay. It's my recollection and the recollection has been reinforced by reviewing the papers that we last had a discovery argument in connection with 2004 discovery in September of last year, approximately 14 months ago.

The papers that I have read provide different perspectives of what has occurred over the last 14 months. But to me one of the revelations is that the claim originally held by Giant Stadium is now held by an entity affiliated with Baupost called Goal Line, and that an intermediate transferee was Bank of America.

To me this is a result of -- as a result of this revelation to me this becomes one of the first examples presented to me in this case, although I'm sure there are many others that are invisible to me, of the phenomenon discussed by scholars as the so-called empty creditor.

The creditor that appears to have real party in

interest status in a bankruptcy case, but who has actually divested itself of all or substantially all of the economics associated with that creditor interest, and it may have other disguised interests that impact that creditor's motivation within the bankruptcy case.

Henry (indiscernible) a professor of law at the University of Texas, who for a time had a senior position with the SEC has written extensively on this subject. And I am personally not only familiar with it, but interested in it. I bring this up because one of my real concerns here is that the papers disclose apparently heroic good faith efforts to settle disputes between Giant Stadium on the one hand, and Lehman on the other, but uncharacteristically this is one of the few cases presented to me at least on the current docket, I don't know what next year will bring, in which parties that have sincerely attempted to resolve their differences have failed in those efforts.

As I understand it, a mediator who is one of the mediators quite skilled in dealing with derivative disputes in the Lehman case participated in at least a one day mediation session, and that that session ended with no agreement, and that thereafter at some point, the parties endeavored to try to restart discussions. And the current flap, if I can call it that, with respect to discovery is a manifestation of the ongoing antagonism between the parties.

To me, at least, the discovery dispute represents deflected antagonism and is subtext for what is really the ongoing unresolved business issues among the parties.

I will note the obvious, this Court and every other Court in the nation despises discovery disputes that cannot be rationally resolved by experienced counsel, and here we have experienced and skilled counsel on both sides. The papers are voluminous and include declarations, references to the transcript from September of last year, and involve a level of effort that to me seems disproportionate to the issues that are in dispute.

And so I have the following questions. First, what is the explanation for the increase in the purported claim amount from $301 million to $585 million? How did that happen, what's the justification for it, and has that been the subject of negotiations between the parties?

Secondly, who is Lehman negotiating with when it negotiates? Are you negotiating with counsel for Giant Stadium or counsel for Goal Line?

Third, why is historical counsel for Giant Stadium still here purporting to act on behalf of an historical creditor when, in fact, the real economics in whole or in part, are elsewhere? To what extent does this represent independent judgment of Sullivan and Cromwell's client and to what extent does it represent Sullivan and Cromwell, and

I hate to use the term, as a puppet for other parties that are driving this bus?

Those are my questions, and I want them answered before we get into the merits of the discovery dispute, which as I said, appears to me to be largely a strategyn chosen by both sides to get into court. I don't view it as a real dispute. I know you do, and you're going to have to justify to me why this isn't one of the biggest wastes of time since this case began.

MR. SLACK: So, Your Honor, starting right with the questions that you've asked. I think it's fair to say that the debtor that Lehman thinks that the claim amount that was essentially doubled was done purely for negotiating purposes. In other words, only after this Court back in September sent us back to mediate or essentially to try to resolve it, the claim essentially doubled.

We haven't had a stitch of discovery on who made that decision, why it was doubled, what the justification is. Obviously, they gave us a piece of paper, but unlike the original 301 million, we haven't had any discovery whatsoever under 2004 about that.

In terms of whether those matters were the subject of negotiation, let me put it this way. Obviously the parties had discussion over the amount of the claim, and there was discussion about the amounts of the claim. I

don't think it's fair to say, however, that the debtor has insight as to why it was done, what's the timing of it, what the basis of it is. We haven't had insight into any of that.

THE COURT: Well, let me just ask you a question, and I don't want to know anything about the substance of the negotiations that took place between the parties. But isn't the first question that somebody sitting down to the negotiating table would ask given this fact pattern, how on earth can you justify an increase from $301 million to $585 million, what's that about? Isn't that the first question? Perhaps not expressed in that way, but I think there would be an element of huge exasperation built in the question.

MR. SLACK: There is that exasperation, and I'm sure those were the subject of discussions, and again, there was a piece of paper that's filed. There is an amended claim that was filed. So, I mean, to the extent that there's an amended claim, we could look at it and say here's what's in it. But in terms of why it was done, who made that decision, why didn't their original financial advisor, Goldman, reach that amount, you know, two and a half years earlier.

Again, we haven't had any kind of insight into any of those kinds of questions, and those have not been answered. And, of course, that's one of the reasons that we

wanted to continue the investigation. So that's, I think, at least from our perspective, you may get another perspective the answer to number one.

In terms of number two, at some point we were informed once Baupost, Goal Line acquired the interest that Sullivan and Cromwell was going to jointly represent Giant Stadium and Goal Line. And so there have been representatives, you know, Sullivan and Cromwell's been involved, Baupost has been involved, and representatives from Giant Stadium have been involved in the negotiations throughout this period.

Now, that's not to say that every conversation included representatives of all, but all parties at some level have been involved in negotiations over the past year.

And I think that's -- I think that that somewhat answers at least what we know about question three, which is why is Sullivan and Cromwell still representing Giants. My understanding again is that they're jointly representing Giants and Baupost and Goal Line in connection with this.

What I can say is again, we haven't had any discovery into that sale. We haven't seen the actual transfer papers between Baupost, and I guess it's Bank of America. We did see the original papers between Giants and Bank of America. That's one of the things we asked for again in our two thousand and --

THE COURT: Why is that even relevant at this point?

MR. SLACK: The only thing that potentially is relevant is exactly I think the questions that you're asking. We need to understand when we're talking to somebody, for example, who is the interest. Who should we be talking to Baupost or not. And that was part of it.

The other thing is, Baupost and Giant Stadium were on opposite sides of that deal. I think we were entitled to see what was disclosed during those negotiations, and we've asked to see that. And we -- they're not privileged, and we should have access to it.

THE COURT: Well, whether you should or should not have access to it, I'm just going to make the general observation that ordinarily when claims are transferred and the Lehman case has been one of the largest unregulated trading markets and distressed claims in the world during the past four years. There's a routine that I'm familiar with not from being a Judge, but having been a practitioner, and you're not likely to find very much of value in the back and forth relating to that claim tread, at least as it relates to the value for purposes of any objection you might file.

These are trades between so-called big boys, and everybody makes their own judgments as to the likelihood of

success in future litigation with regard to the claim. You may or may not be ultimately entitled to obtain that information, but even if you do, in my view, it's a big so what.

MR. SLACK: Might be. Look, you know, what you're saying obviously from experience makes sense. What I would say, Your Honor, is that this is a little bit unlike other claims, in that it's obviously a very large one. It's obviously unliquidated. It's obviously the main issues that somebody looking to buy it are going to be asking themselves are, at the end of the day, is it a receivable or is it a payable, and if so, how much.

So I think, you know, it's a little bit different than, you know, a claims market with liquidated claims. But, you know, that's just the tiniest piece of what, you know, we were seeking in our 2004.

So, Your Honor, would you like to hear the answers to those questions from counsel, or would you like me to go ahead with my argument? I mean --

THE COURT: I'd like to hear what counsel for Giant Stadium has to say about the big picture questions that I raised. And one of the reasons why I'm focused on this is that I am concerned about more than the discovery dispute that has been presented to me, I'm frankly concerned as to why we're having the dispute at all, and why this claim is

different from other claims, so many of which have already found their way into formal claims objections.

And I'm interested in that question, but before getting to it, Mr. Slack, I'd like to hear comments from --

MR. SLACK: Okay.

THE COURT: -- counsel for Giant Stadium as to some of the preliminary questions that I asked.

MR. SLACK: Sure.

MR. CLARK: Thank you, Your Honor. Again, Bruce Clark for Giant Stadium.

Trying to take your questions in order, as to the increase in the amount of the claim, when the claim was originally filed, it was filed with five, I believe there were five caveats as to items that have yet to be quantified. And when the claim was revised at least two of those items were the cause of the increase from 301 to 585 million.

One of them reflects the amount of a capital charge, which the person stepping into the shoes of Lehman, in our view, would've had to incur, in order to protect themselves by way of reserves against the likelihood of a further default. And the other was a difference in the credit charge. That difference came about because the original deal with Lehman involved raps by insurance companies, either Figik (ph) or FSA, both of whom at the

time of the transaction reviewed were rated as AAA credits in the market. And at the time of the putting out of the proof of claim, the amended proof of claim, we quantified an additional amount because those protections were gone. And the amount that one would have to pay to get the equivalent protection was greatly increased.

And I am not, I've got to say, I'm not trying to duck this, but I am not the person who has studied this in the last month and really can give you a better answer. But that's my understanding of the two principal reasons that the amount was increased between the first claim and the second claim.

THE COURT: Okay.

MR. CLARK: As to --

THE COURT: Has that information which you just shared with me previously been shared with Lehman when --

MR. CLARK: Yes.

THE COURT: Okay.

MR. CLARK: I mean, as Mr. Slack said, it's in the -- a description of that much is in the amended proof of claim, and neither Weil nor we particularly want to go -- and should go into the specifics of the conversations. But the conversations during the settlement talks centered on this and a lot of other points.

I don't know if the question you asked why did you

increase the 301 to 585 was the first question that came up. But it certainly was a question that was explored.

THE COURT: Assumingly if I were on the receiving end of a claim like that, even if we were talking about hundreds of dollars instead of millions of dollars, the first question I would ask, how on earth could you be claiming that much more.

MR. CLARK: I think --

THE COURT: How did this claim double?

MR. CLARK: I think you're being more courteous than the words I heard when the question was asked.

THE COURT: Okay. Well then --

MR. CLARK: And clearly that was asked.

THE COURT: Well, I'm in court so I have to be courteous.

MR. CLARK: Right. But that -- I mean, my best recollection is that was discussed. As Mr. Slack said, a lot of the conversations in these settlement talks took place with different people from the interested parties at different times, and neither of us was party to all of them by any means.

THE COURT: Okay.

MR. CLARK: I'd be astonished if that was not talked at length.

Second, who was Lehman negotiating with, I agree

with what Mr. Slack said. I think I just said the same thing, but they were negotiating with people from Sullivan and Cromwell. We are representing both Baupost and Giant Stadium. They were all negotiating with people from Baupost at the same time, and Giant Stadium people as well. And there were a variety of people on the Lehman side. I mean, there must have been 20 that I met at one time or another.

So it was a very active negotiation or series of negotiations over that time period.

THE COURT: One of my fundamental questions is whether Giant Stadium has continuing economic interest in this claim or is a so-called empty creditor. Is it an empty creditor?

MR. CLARK: No, it's not. The reason it's not is because the sale papers between Giant Stadium and Bank of America which the debtors do have, and which they did ask questions about in the deposition, make it clear that Giant Stadium has a contingent interest in the result of the negotiation or resolution of the claim. It depends on how much is paid or how much is not paid. They do have a material interest one way or another.

THE COURT: So as a kicker?

MR. CLARK: It's either a kicker or a pay back or a clawback, one or the other.

THE COURT: Okay.

MR. CLARK: Okay. As to the question that came up about the sale between Bank of America and Baupost, my information on that is that Giant Stadium was not involved in that. That was a transaction between Bank of America and Baupost. They negotiated it. And I don't believe we have anything certainly anything material to either produce or to disclose about it. That is not a transaction that to my knowledge, I just heard Mr. Slack say, they have information about, but neither do we.

THE COURT: All right.

MR. CLARK: Have I addressed the preliminary questions? I thought I took the list down right.

THE COURT: I think you have, although Mr. Slack seems to want to interject at this point. Do you want to proceed with your main argument?

MR. SLACK: Yeah, please, thank you, Your Honor.

THE COURT: And understand there is this other question which in effect wraps all the other questions. Why are we here with a discovery dispute as to a claim, that's whether it's $301 million claim or a $585 million claim appears at least in the Court's view to be more or less indistinguishable from any number of other derivative type claims in this bankruptcy case, and in effect, is a righted question, are you gentlemen both serious about this dispute?

So much has gone into a 2004 examination request

and resisting that request and efforts to make it reciprocal, that it raises more questions in the Court's mind than it answers as to what's going on here. Now, I want to know what's going on here.

MR. SLACK: Well, Your Honor, as I think you know from the docket, the debtor has taken 2004 discovery with respect to, you know, hundreds of counterparty, derivative counterparties and we haven't had these issues. I mean, if you think about the number of years that I've been before you on matters, if we've had a couple of discovery disputes, that's a lot.

And so I think we have a record frankly of these kinds of situations, and this just hasn't gone the way of the other ones. Because we have frankly been obstructed, and we have a -- you know, we had a situation a year ago, and that -- what happened a year ago in September is we had another discovery dispute, and unfortunately, we had -- you know, we listened to the Court tell us that frankly you didn't like that discovery dispute.

THE COURT: I'll be very consistent. I'm not likely to like any discovery dispute that you present to me.

MR. SLACK: But what happened in that hearing is important for today. What happened in that hearing which concerned a motion to compel Giant Stadium with respect to privilege is Giant Stadium said, Your Honor, they won't talk

to us about the merits. They won't sit down with us and talk. And I said, Your Honor, I was concerned. And my concern was, we were in the middle of an investigation that we had not finished, and we needed a little more time to get it done, as long as we had cooperation.

And I said I didn't want a gotcha. I didn't want to sit down in negotiations, talk about our preliminary views of the merits, and then have, and be faced with the argument that Giant Stadium says, well, obviously you know the merits, you've had discussions with us on the merits, you don't need anymore 2004 discovery. And I sought a commitment from Giants that we wouldn't be faced with that argument.

And the Court responded as follows, says, "You don't even need that commitment because I'm going to give you a gotcha from the bench, a no gotcha. If you choose to have a conversation that could lead to some kind of productive business-like resolution to this, doing that will not constitute a waiver of any of your discovery rights or your rights to continue with your investigation as you see fit."

Now, I'd point out that at that time when the Court gave us the assurance that, yes, we could enter into the negotiations, so to speak, talk about the merits even though we hadn't finished, that we weren't going to be faced with

exactly the argument we're being faced with today. Giant Stadium stayed silent. They didn't raise their hand and say, Your Honor, you can't do that, they're not entitled to any discovery. They didn't say any of that. They stayed silent.

THE COURT: Well, I understand what happened. I actually remember it and my memory was further refreshed by looking at the transcript. And I know that there's a point that you've emphasized in your papers, and you're emphasizing it again now.

But it's 14 months later. You've had some further discovery, and you've had further business discussions, and you've had a mediation session. Without going into the substance of what was discussed in the various sessions, it appears to me at least, that inevitably there has been a sharing of information in positions by the parties, or there could not have been open and good faith negotiations.

So today, almost Thanksgiving 2012, you must know much more about the claims and the defenses to those claims than you knew 14 months ago. It just seems to me impossible that you are in effectively the same position today that you were then.

So that's one concern I have relative to your position. Another that I have is that Giant Stadium argues in effect without using this hackneyed expression, what's

sauce for the goose is sauce for the gander. If there's going to be discovery at this stage of the game, it should be reciprocal. We shouldn't just be turning over 64,000 pages if that's the right number of discovery only to be asked for more. When does this "investigation" come to an end? Is it serious? Is it real? And why are you not simply doing what you've done in other settings, file an objection? We'll have a contested matter, we'll have reciprocal discovery, and the 2004 discovery that we're arguing about is rendered moot.

MR. SLACK: Well, there's a couple of pieces that I want to answer first. We haven't had any other discovery in the last year. Since that hearing, there has been no discovery. Now, there has been discussions, but I can tell you that we have not had a stitch of additional discovery or information in our investigation.

Our investigation has been frozen by both agreement and by the Court effectively during that 14 months. And --

THE COURT: Let me interject and say that when -- you're using the term discovery, I think you're using it as a term of art. When I use the term discovery, I think I have a broader sense of the term in mind.

Necessarily, you must be learning more than you knew before simply by virtue of participating in discussions, information is being shared. Otherwise, you're

not having good faith negotiations. Is it just pointless posturing, or is there in fact some meaningful exchange of information?

MR. SLACK: I don't believe that -- and I'm not going to try to, you know, parse through, but I can tell you this. I think the parties have had a number of intense discussions on position. I don't believe there's been a further exchange of what I would call information, underlying information about the matters that we want to investigate.

And so, yes, there have been a number of exchanges of position. I don't want to -- I don't think it's appropriate to go into that, but there hasn't been -- you know, there hasn't been a sharing of additional information. Effectively the investigation froze, and we said we would have discussions with them on the merits based on what we knew. And I have to tell Your Honor, what happened here is exactly what I was worried would happen. And that is, we would engage in good faith discussions on the merits, and then be faced with an argument that said, okay, now you can't have 2004 discovery to finish your investigation.

And I -- and that's compounded, Your Honor, because not only did we get the Court's assurances, but Giant Stadium actually made an agreement with us. In other words, you know, Baupost and Giant Stadium when they were

negotiating with us after the failed mediation we wanted to continue our investigation then. And they said, if you engage in these principal to principal negotiations at that point, we're not going to hold it against you. We actually had a written agreement. It's Exhibit H to the Firestone declaration.

And the agreement was, it says, Lehman's "willingness to enter into settlement discussions does not constitute any waiver of our rights and is without prejudice to our ability to complete our investigation under Bankruptcy Rule 2004."

I'm really at a loss, Your Honor, to understand how the position that they're taking today isn't a direct breach of that agreement, and frankly, the assurances that we received from the Court should allow us to continue our investigation as we see fit, because it hasn't continued at all since then.

And, you know, and the question of when it's going to end, if we had three to four months of cooperation from Giant Stadium and the third parties, I think we would get -- you know, we would get there. We haven't had that cooperation, and it -- you know, all I can tell you is that there are areas that we've laid out in our papers, and I'm happy to go through, but there are areas that we still need, you know, to investigate. We said we wanted to investigate

them back in September of 2011, and we wanted to complete it then. But it was based on the assurances from the Court, based on the agreement from Giant Stadium that we actually went forward with the discussions.

THE COURT: Mr. Slack, let's circle back and revisit particularly assurances from the Court that I recall giving. I'm not breaching any commitment made to you. The commitment related to a term that doesn't have legal significance. It's gotcha. The idea was that participating in settlement discussions would not be cause for you to end up with forfeited rights of discovery.

I can say that for myself I never expected to be talking about this with you more than a year later. And one of the things that to me appears to be a changed circumstance, and we can discuss whether it changes any outcomes, is that at least from the perspective of Giant Stadium, there is the protection that this 2004 investigation is more tactical than real, and that you really have at a business level already determined that you're objecting to the claim. So that you don't need the further investigation to make a judgment as to whether this is a claim you're going to say yes to. You already know you're saying no to it.

Given that setting, I think things may have changed.

MR. SLACK: Well, I have to tell you I don't think they've changed one bit, and I don't agree with that at all. And I -- I'm usually not so blunt with this Court, and I've appeared many times in front of it.

THE COURT: Well then you're getting used to it.

MR. SLACK: The fact is, is that we have exactly the same information that we had back when we started in September of 2011. And what I was worried about was somebody taking exactly the tact that Giant Stadium said, and frankly that Your Honor just took, which is that if we -- you know, obviously our discussions on the merits had to include discussing preliminary views. And what I was worried about is if we had discussions and we talked about those views based on a partial investigation that someone would say there's changed circumstances.

And the truth is, Your Honor, that's a gotcha, because what we should've said is, Your Honor, then we'll finish our investigation and then we'll talk. Because there are still critical areas that we haven't had the slightest stich of information because we talked for example, we didn't take any information from the NFL.

Now, we have a subpoena outstanding to the NFL, that's been frozen as well per agreement, and they've agreed to produce documents now. There's Goldman Sachs. Goldman Sachs did all of this work on the valuation, and again

that's been frozen while we've been in discussions. There's insurers. The insurers here which insured the underlying option rate securities, they had certain consent rights, and they were actually -- there are e-mails and communications with them, significant ones during the time frame of the termination. And again, we have a subpoena outstanding with respect to that, and it's waiting this.

We haven't taken any discovery with respect to, and as I mentioned before, the amended claim as to exactly when that was made, and what the basis of that is. And there are serious issues with respect to one whether that claim should be allowed to be amended at all, and then what it is.

So there are significant issues. And again what I'm concerned about here is that nothing has changed from September of 2011 except that we engaged in real and hopefully good faith discussions, where we did discuss our preliminary views of the merits. And based on those preliminary views, and that's the only thing that's happening, that's the only thing that's different, and that's the only thing that's changed. We are now faced with we're not allowed to finish our investigation.

And I can tell you this, this is not tactical. This is not tactical. This is real. We need the information, and this is information we sought and wanted in September of 2011 before the discussions. It's not like it

was, you know, heaped on now. They knew we wanted this information. It's not tactical. And other parties have allowed us to take this kind of 2004, and we haven't had the disputes. They've cooperated, it's gone quickly. And this would go quickly if we had cooperation from Giant Stadium and the third parties.

With respect to the -- you know, Giant Stadium's motion to take 2004 --

THE COURT: Before we get to that, let me ask you one more question. In what respect, if at all, would Lehman be prejudiced if you simply objected to the claim now, based upon what you know, and proceeded to take discovery in a contested matter, everything presumably that would be the subject of the 2004 request would simply be the subject of ordinary course discovery in that contested matter?

MR. SLACK: What I can tell you is there has not yet been a determination, that's one of the reasons that this is a very complex, and I can tell you this, Your Honor, honestly, that there has not yet been a determination by the estate whether we are going to press that this is a receivable to the estate or a payable.

There are very interesting issues. I'm happy to go into what they are. But in that sense, this is very unlike most of the claims, because in many of the claims, and in many of the swap cases, we know it's either going to be a

receivable and a payable. And because of some of the issues here, which are very complex, the estate has not yet made a determination whether to press this as a receivable, and actually bring this as an affirmative claim, or whether simply to treat it as an objection to a claim. And if we object to the claim, again, what I can tell you honestly is why we have preliminary views, there has been no determination yet as a final matter, as what grounds we are going to take, because again, there are many different layers of this onion.

And I would say the following, Your Honor. It may be that somebody comes in and files a claim, and you've probably seen this in your career. They file an outrageous claim, you know, they've got something that's $10 billion they put in a claim. Well, it may very well be that the debtor knows it's not going to pay $10 billion, and it's going to quote object to the claim.

I don't believe that cuts off 2004 discovery to figure out and understand the bases for that claim, and to figure out the bases for the objection. And so whether or not the estate -- you know, I can tell you this, the 600 million that they've put in their amended proof of claim is more than the face amount of the underlying notes that were being hedged.

So essentially they're taking the position that

they deserve in unwinding the hedge more than the underlying face amount of the notes. Now, I can tell Your Honor that sounds to me facially unreasonable. But that doesn't mean that just because somebody files this wild claim and you're going to say, hey, I know I'm not agreeing to 10 billion, it doesn't mean you can't go and take 2004 discovery.

And the analogy on the other side, Your Honor, I think is striking. What 2004 allows you to do when you're filing an affirmative claim is to understand the bases for it. It's not just enough to say, hey, I think at the end of the day I'm going to file, you're allowed to go and investigate, so you know the bases of your claim, so you could actually bring a Rule 11 type claim on the affirmative side. Well, it works the same way on the claims side.

So I don't think the question here is are we likely to object to, you know, the 600 million in claims. I think there's a really serious issue here as to whether this is a receivable and a payable, and if so, what are the bases, and I can tell Your Honor, there is no definitive view on that. And we need to investigate in order to figure out whether we're going to bring this as an adversary proceeding or we're just going to object to the claim.

THE COURT: Okay.

MR. SLACK: I'm happy to talk about now the 2004 discovery. I think I can be a little briefer. Obviously I

was asking some questions from the Court, and do this all at once rather than --

THE COURT: I'm treating this as one matter because it has multiple parts.

MR. SLACK: Let me then speak to the Giant's motion to take 2004.

So what the Giants has essentially done has said, because we, the debtor, want to take more discovery, they'd like to take some discovery. And the difference, of course, is once they've filed the claim, the debtor here can make two decisions. We could say, we agree with some or all of that claim, and if we do that, much of the discovery that they're going to seek could very well be premature and frankly ultimately useless.

And so what makes sense here is to let us finish our investigation, figure out are we bringing this as an adversary proceeding, are we going to object to the claim, and if so, on what bases. And then that will actually shape the kind of discovery that ultimately if we're going to object to it, that Giant Stadium will be able to get. If you allow it now, you have a potentially wasteful and unnecessary set of discovery that's unneeded.

Second, Giant Stadium is really unable to swear, it never tries. Its own argument that it makes in opposition to our 2004 with their request to take it, and of course,

we're in different situations. They actually cite a case, GHR Energy Corp for the proposition that a party may not use 2004 after it has determined to pursue a claim. And, of course, it has filed claims. And what's -- they never try to square these positions. They never try to square the idea that they are in a situation, because of course, they do have all the information. They never try to square the -- you know, that they have filed the claim, its detail.

And so under their own case law and authority, they're simply not entitled to get any at this point.

Third, even if it wasn't, you know, facially deficient, their request for 2004, as a matter of, you know, policy, this Court shouldn't allow it. And that's because there is a claims process when people file claims. And this happens, I assume, you see it much more than I do, is people file claims, and yes, debtors take 2004 discovery. And at some point, debtors will object to those claims or not. And if they object, there's a full process, sometimes outlined by the Court, sometimes not, to take discovery. And that's what should happen here.

And what Giant Stadium has essentially argued is that they should jump that process, that the process that applies to everybody else's claims shouldn't apply to theirs. And they even make, I think the incredible argument that creditors are actually permitted to take 2004 discovery

after filing claims to bolster those claims. Well, think about that as a precedent for your cases.

If that were the case, you would expect to see I think a number of cases where creditors do this all the time. I can tell you that if that were the law, I'd think we have hundreds if not more creditors in this case trying to seek discovery on their claims.

And Giants states two cases that I do want to discuss because we haven't had a chance to do that in any kind of reply for that idea. The first is a Drexel Burnham (ph) case back in 1991. That's a case that my colleague, Peter Grunberger (ph) participated in. And in the Drexel matter, one of the major creditors in that case was the FDIC and there were also creditor's committees.

Well, at least one of those committees was taking 2004 pursuant to a stipulation. And what the FDIC wanted, which was a major creditor in Drexel, was it wanted access to the discovery that was being done by the creditor's committees on other issues.

And what the Court said is the FDIC because it was such a major creditor could have that discovery even if it would bolster its claim. But what didn't happen in that case is what Giant Stadium wants here, is that the FDIC was allowed to put forth its own 2004 discovery on its claims. That never happened. What they want here did not happen in

the Drexel case at all.

The other case cited by Giant Stadium is a Texaco case, another case that Weil appeared in, in which Texaco's largest judgment creditor, Pennzoil sought 2004 discovery, again relating to issues in the case because it was the largest judgment creditor in Texaco.

And there was no request to take discovery concerning a filed claim, because remember it was a judgment creditor, it'd actually gone to trial on its claim. And that claim was not the subject of 2004 discovery.

So, you know, I think Giant Stadium is just simply not correct on the law, that once you filed the claim as a creditor, you can take 2004 discovery on that claim. Certainly we see creditors in cases and creditor's committees taking discovery, let's say there's third party claims out there, the debtor's not pursuing, you certainly see that kind of discovery. But what you don't see is 2004 discovery allowed on particular claims filed by those creditors. And there's no case that they cite where that's the case.

And again, if that was the case, it would really blow up the claims process in a case like --

THE COURT: Let me ask you this question, which doesn't relate to precedent that may or may not be directly relevant or instructive to the current dispute. And instead

to focus on the current dispute.

You have acknowledged in your argument that the underlying facts here are unusually complicated, and that your own client, which is certainly as sophisticated as any counter party has not yet concluded whether there is an affirmative claim here or a defense of claim if there are any defenses, for that matter.

Although at the preliminary matter, you've acknowledged that given the change from 301 million to 585 million it is highly probable that some objection will be made because you compared it with what might be called a preposterously large claim.

But given the complexities that you have acknowledged that underlie an analysis of claims and defenses, is this not a somewhat exceptional circumstance in which the typical discovery may be appropriate, and may not lead to the adverse consequences that you've described of hundreds of creditors coming in to seek what they're really not entitled to discovery with respect to their claim?

MR. SLACK: You'd only see it if you granted it. I think that the -- I think that you're likely --

THE COURT: Well, I'm asking the question intending to probe some of the issues here.

MR. SLACK: No. And I think it's -- I think you would end up frankly being in the same situation as many

other creditors, because every creditor is going to say, they're not going to know the facts, the underlying facts of Giant Stadium, they're going to say, Your Honor, we have a complex derivative.

What I can tell you is this, is that the information that we need or the information that's really relevant to the determination is all on their side. Their discovery is purely harassment. In other words, what they want from us is purely just a harassing set of discovery. They have told us so many times, even in their papers, they don't like one-sided discovery. And that has stuck in their crawl. And so what they're trying to do is purely as a harassing matter.

Think about what they did in this motion and I think you can understand that they don't need a stitch of discovery. They filed this motion 18 months ago, and they have adjourned it for 18 months in a row. And it wasn't until the settlement discussions ended and we pressed our continuation of the investigation that all of a sudden they say, oh, we need discovery. And that's because the sole purpose of it is to try to harass us.

The information with respect to the termination of the transaction and what happened is all on the Giant Stadium side, not on the debtor side. And the information that they want here is, at the end of the day, we don't know

whether it's going to be irrelevant or not, but it may very well be a waste of our resources to produce all of this stuff now, when we haven't made a decision as to what our defenses are actually going to be here.

Again, we have preliminary views or else we wouldn't have been able to engage in the settlement talks. But I can tell you that what's going on here is purely a harassing set of 2004 requests. And they are unnecessary because at some point, if we object, Giant Stadium will have a complete opportunity to take discovery.

Thank you, Your Honor.

THE COURT: Okay. Thank you. Mr. Clark.

MR. CLARK: Good morning again, Your Honor.

You know, some of the points that you made in your questions frankly fit rather well with the points I was going to make to the Court. First of all, on the gotcha issue, we have not argued at all, and I'm not arguing today that because Lehman entered into settlement negotiations and we had a mediation and all of that, that they somehow waived their rights. That's not what we're saying, and I think that's what Your Honor meant when you said there'd be no gotcha. And I'm equally sure, although I didn't raise it because I didn't think it was necessary, there was no gotcha for the Giants either. I mean Giant Stadium was waiving any rights because they went into a year or more of discussions

at the same time.

But it is a fact that the debtors today are in a different posture, and not just because of the passage of time, although there has been a lot of time that has passed. They just conceded, as I think the transcript will show, that they're not going to do anything other than object to the claim in one form or another. They're going to object to it, they're going to file an adversary proceeding to collect on their view of what they have is right, but this is going to become a contested matter in one form or another. It already really is. And that's the problem.

In order to get this to the point where we think the parties have a better chance to resolve this, if it has to be through litigation, so be it, there has to be discovery on both sides. This last point about us wanting documents from them because of harassment is completely unjustified.

If you look at the paragraphs of documents that we're describing the documents we're asking for, and you read the transcript of Mr. Slack's deposition of Ms. Prokopse (ph), everything we've asked for practically is in there. It's what's at issue in this case. It's not as though we're wasting our time putting together document demands to make them file a motion. We have no interest in that whatsoever.

I think the key in this situation is your question, your point, that shouldn't at this point the obligations to produce information and to proceed be reciprocal. And I think the answer to that has got to be yes. And as an indication of the status that we're in, of the stage that we're at, I refer the Court to the new deposition subpoena, the second deposition subpoena, which is a 30(b)(6) deposition. That is not an investigation tool. That's a litigator's tool, to help resolve a dispute that is already there.

They want us to educate Ms. Prokopse on all the things that they say she didn't know about before, and on a bunch of other topics. And the reason they gave was to bind her to that testimony, and to bind us to that testimony. That's not investigation, that's litigation. We're already at that stage, and that's what they're asking for, and that's why we think either of two things has to happen.

Number one, their current subpoenas for additional documents, much of which is repetitive of what we already gave them, and for this additional deposition should be quashed, so that there is not this continuing façade of an investigation. They should not be allowed to simply say it's preliminary. They said that 14 times at least in the papers that they submitted to the Court.

It's preliminary, therefore, it's likely to have a

white feather. We can continue to do whatever we want to do and it's one way. There's no way that they have not made up their mind that they're going to take action either to object or to file an adversary proceeding. Nobody in this courtroom can believe that, I hope Your Honor doesn't.

So if the motion to quash is granted, then we're at a point where they would have to meet forward, and either object or file the adversary proceeding as far as I can see. Our request for discovery under Rule 2004 is an alternative if we're going to continue this 2004 process, we think we should at least be allowed to begin to get the documents from Lehman's files that bear on the same issues that they have raised.

In another case mentioned, Mr. Slack mentioned the FDIC application and Drexel Burnam. In the Federated case, the FDIC came in the same way, and they had major claims, and they wanted to take discovery, I think it was of the creditor's committee, and the Court permitted that.

And the Court said I'm going to permit it because these are people who are just preparing their arsenals for battle. And the way they're going to get to a resolution at the end of the day is if they both know as much as they can about the other side's position. So that's where we are.

We would like to be able to have this is in a position where we can take discovery, they can take

discovery. I think personally that that is the best way we're likely to get to a resolution of this. And I think it's fair at this point. The bankruptcy has been -- it's over four years old. We've been in some sort of contest with the folks from Lehman for over two years. It's simply time to move on to the next stage, and that's why we're objecting to their discovery and suggesting alternatives.

THE COURT: All right. Thank you. Anything more, Mr. Slack?

MR. SLACK: Just a few -- a couple of minutes.

Your Honor, with respect to the 30(b)(6) deposition, and I think it's important to understand that we took a deposition of a particular person, Christine Prokopse, who's the CFO of Giants and (indiscernible) Giants Stadium, and there were many instances, and we've put it in our papers where there were critical things that she didn't know. So we actually had a conversation with counsel for Giants, where I said, look, we can take, you know, the deposition of the other people who all happen to be more senior. They're the MARs (ph) and the TISH's (ph). And we said, what we're willing to do is we're willing to take, because we just want the information, we're willing to take a 30(b)(6), you can designate whoever you want, but then you have the obligation to educate.

It is purely an investigative tool to find out the

answers that we didn't get from that deposition. It is not a litigation tool, and we took this tact because we thought it would be more palatable, though, perhaps we should just go and take the depositions of the other senior people, that was another way, you know, of getting potentially to that information. But it was purely seeking information and not trying to, you know, go forward with any kind of litigation.

And other than that, Your Honor, I would say as follows. Is that when they say that they've never tried to say this is a gotcha, all you have to do is read the first line of their reply. Where they say that debtor's cross motion is premised on the unsustainable argument that debtors have adopted only a preliminary position as to the merits. And then they say, "To the contrary, although Giants Stadium is constrained from disclosing the substance of settlement negotiations, it's clear the debtors have determined to object to the claims."

What they're saying, Your Honor, I think is exactly the gotcha. It's exactly that because we entered into settlement discussions which they had an agreement that we could do and not give up our rights to 2004, and this Court gave us assurances we would not, so.

THE COURT: How are you giving up rights to 2004 if those rights are conditioned in whole or in part on some reciprocal discovery?

MR. SLACK: Well, two fold on the reciprocal discovery. I think that the idea of giving reciprocal discovery for what is essentially a claims dispute doesn't make any sense until there is a determination essentially in the investigation.

And the reason for that is what I said, number one, is that it might be wasteful, and number two, it sets a bad precedent. But I would ask a different question on top of that. Which is, what's the harm, assuming they're right, that they're going to have a -- you know, an objection and this -- you know, what's the harm in letting us finish our investigation over the next three or four months, and then if we file an objection, they'll get full discovery.

They need the discovery for the claims process, and they'll have it, because Your Honor's going to make sure that they have whatever they need. But that's the way all the other claims work, and that's the way this should.

And I would ask the Court one other thing, which is to consider that they still have not answered the inconsistency in their own position between their motion to quash and their motion to take discovery. Because if you look at their argument, GRH and the other pages and pages they raise, their own argument is that they're not entitled to it once they file their claim, and they've never addressed that inconsistency. Thank you, Your Honor.

THE COURT: Okay. One more thing.

MR. CLARK: Okay. I'll address the inconsistency. It's simply a situation of -- there are a number of courts that have said you can have discovery even after you filed a claim, so it's not inconsistent across the board. The only thing we're trying to do, the only thing we're trying to do is to have some sort of a process that will let this resolve itself sooner rather than later.

And the things that we've asked about are not just -- they are not under the control of Giant Stadium. We've asked questions about how they evaluated and viewed the termination process, about what if any steps they took, that they were obligated to take under the papers, including going out and getting quotes in the market, and doing a number of other things. These are all issues, they're all documents that are directly tied to issues that are presented in this case.

We think the best thing to do would be to go to the next stage, whether there's an objection or an adversary proceeding, and then you're right, all this discovery gets resolved hopefully without Your Honor ever seeing us again for that purpose.

But if we're going to have this continuing Rule 2004 discovery, then the only way it seems fair to us is to have both sides have access to it. And, you know, if you

look at the -- I know Your Honor's familiar with all this, so I'm not going to belabor it, but if you look at the background, the Cameron case and all the other cases that dealt with the origins of Rule 2004. Originally it dealt with a situation where a receiver came in, wasn't familiar with the debtor, and had to have an expansive and quick, quick review of the debtor's assets in order to protect creditors. That's what any number of the cases have said.

It is not an excuse to allow a debtor in the circumstances present here to just continue with their investigation because the investigation is preliminary and not final, and it's final because it's preliminary. That's what they're saying. It's a little circular, and I think we ought to move on. Thank you.

THE COURT: Okay. Well, thank you for your candor in answering the Court's questions and in your presentations. I don't see this as a typical use of Rule 2004. Nor do I see it as a case that will open the proverbial floodgates of other discovery in part because Mr. Slack in his presentation, candidly observed that at this juncture, more than four years into the Lehman bankruptcy case, his client really doesn't fully understand all elements of claims arising out of this complicated auction rate hedge.

And it's apparent that if they could determine now

that they had an affirmative claim, they would assert it. Lehman has not been shy about asserting such claims in the past. Additionally, it seems fairly obvious that if Lehman had sufficient information available to it that would support not just a shotgun approach objection but a specific and tailored objection to the claim, it would file it.

Throughout this case, Lehman has been active in filing and pursuing objections to claims, and in fact, part of this morning's agenda relates to objections to claims. And so I view this as an exceptional case. And, in fact, that was one of the reasons I asked a number of questions at the outset to determine to what extent the issues that related to this discovery dispute were exceptional and unique, and to what extent this was just another example of a derivatives dispute, this one happening to have the negative gloss of active discovery disputes, as opposed to active negotiations leading to a settlement.

I believe a continuing 2004 discovery under the circumstances makes sense, although the fact that this is occurring 14 months after our last discovery dispute is a terribly negative fact. One conclusion to be drawn from the mere timing of this, is that this dispute is taking too long to resolve, and that despite best efforts, reasonable people are unable to get to yes, and they should.

And so I'm going to propose that counsel meet and

confer in an effort to develop what I'll call a reciprocal discovery protocol, and it is not necessarily limited to 2004. I believe that one of the things that distinguishes the dispute that I've heard a lot about this morning from other disputes, is that there is no foreseeable outcome here in which Lehman is not objecting, or bringing affirmative claims relief.

This is not a situation in which Lehman is engaging in a 2004 process to later shake hands, and say here's the money. I also believe even though everybody has denied this that the 2004 dance that we're engaged in necessarily has tactical aspects to it. And so here's what I am directing.

Between now and the first of the year, I would like the parties to develop and agreed discovery protocol that will be applicable whether we're dealing with 2004 discovery or claims related discovery. It would be extraordinarily wasteful for the discovery that's taken in 2004 to be replicated again. And in the case of Ms. Prokopse, that's already happening. Enough already.

I recognize that the 2004 sword is more properly used by the debtor than by the creditor in this instance. And so discovery from third parties and discovery from Giant Stadium and discovery from Goal Line may be more appropriate than discovery from the debtor. But that does not mean that some discovery from the debtor is not also to be part of

this process.

One of the mysteries from the perspective of the Court is that this third party discovery and discovery from others is so critical from the debtor's perspective in being able to formulate its own position with respect to the claim. But I accept the representations made that ongoing 2004 discovery is needed in order for the debtor to complete its investigation to use its words.

I would ask the parties to report the results of these efforts at the December omnibus hearing. You don't have to the point of an agreement, in fact, you could be to the point of no agreement. I'd like to know that, in which case I will then be able to either rule or take this matter under advisement, but I have I think provided sufficient guidance here to suggest that what I consider to be an appropriate result is reasonable discovery going in both directions with the understanding that the need for that discovery is more obviously greater for the debtor. And this is not an example of gotcha because I am indicating in agreement that continued 2004 discovery is appropriate for the debtor and the debtor's benefit.

I'm also noting the time's up in effect. This has to come to a conclusion. And I don't expect there to be another discovery dispute between the parties until there's active litigation between you. And I hope that doesn't

occur at that point either. So I'll hear from you next time.

MR. CLARK: Your Honor, just a question of clarification. How does the January 1st deadline fit with the next omnibus hearing? I'm not --

THE COURT: I don't know.

MR. CLARK: Okay.

THE COURT: I'm just looking for a status report at the next omnibus hearing. And if it doesn't fit well for the parties, it can always be put off, and then we can make that a telephone conference.

MR. CLARK: Thank you, Your Honor.

MS. MARCUS: Your Honor, the December hearing is December 19th.

THE COURT: 18th?

MS. MARCUS: 19th.

THE COURT: That seems like a perfect date for a status report.

MR. MARGOLIN: The omnibus hearing is on December 12th, Your Honor.

THE COURT: Why am I hearing different dates?

MS. MARCUS: Sorry. Sorry, Your Honor. December 12th, sorry about that.

THE COURT: December 12th is a perfect date, too. Either one's fine.

MR. CLARK: Thank you.

MR. SLACK: Thank you, Your Honor.

MR. MARGOLIN: Good morning, Your Honor. Shall we wait until --

THE COURT: Why don't we just wait for those people that are leaving to exit.

MR. CLARK: Thank you.

(Pause)

MR. MARGOLIN: Good morning, Your Honor, Jeffrey Margolin, Hughes, Hubbard and Reed for the SIPA Trustee, Mr. Giddens. We have two uncontested matters on this morning's agenda. The first one is a settlement agreement proposed with the LBF Chapter 15 debtor that is going to be handled by my colleague, Mr. Greilsheimer, and then a portion of the trustee's general creditor claim procedures motion which is going to be handled by my colleague, Meghan Gragg.

THE COURT: Okay.

MR. MARGOLIN: Thank you.

MR. GREILSHEIMER: Good morning, Your Honor, Jeff Greilsheimer for the SIPA Trustee.

This is a global resolution of all of the claims between LBI and Lehman Brothers Finance. It was an aggregate amount of about 6 billion that was submitted to LBI by LBF. We have resolved that allowing a claim of approximately 190 million as a customer claim and 360

million as a general creditor claim against the estate. And it is a complete resolution of everything that we have going between the estates. We believe it is well within the trustee's discretion, and is an excellent result for the estate.

If Your Honor doesn't have any questions, Mr. Krakow on the Chapter 15 proceeding.

THE COURT: I'll handle them together. I've reviewed the papers. It seems like a very fair and balanced approach, and there are no objections. So this becomes as close to a lay up as we get when we're dealing with $6 billion.

MR. KRAKOW: Your Honor, Robert Krakow for LBF. I'm not sure there's anything I need to add then. This is a very fair and substantially negotiated settlement that's the combination of months of efforts by accountants and lawyers, and ultimately the business people on both sides, so it is a fair and reasonable settlement, as reflected by the fact that there are no objections either with respect to the LBF case or the LBI case.

THE COURT: I'm very pleased with the outcome, and I know that these things when they're finally resolved look fairly plain and straight forward on the docket, especially when they're uncontested, but that in dealing with the disputes between these two estates over the years, I know

C E R T I F I C A T I O N

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: November 17, 2012

Signature of Approved Transcriber

Veritext

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